

# *Appendix*

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# Water Resources Program – Adjudications Strategic Plan

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# **Water Resources Program – Adjudications Strategic Plan**

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### **Section 1: Introduction**

Water is a limited resource with increasing and changing demands on it. The need for reliable information on the extent, validity and relative priorities of existing water rights is essential for water resource management and planning. Currently, general adjudications are the only way to determine this information comprehensively and with certainty. The Water Disputes Task Force has been charged with recommending one or more methods to resolve water dispute resolutions. Based on the outcome of the work from the Water Disputes Task Force, the future may hold alternative options outside of the current adjudication process. However, this plan is created based upon the existing statutory structure and existing opportunities.

### **Section 2: Relationship to Program Mission and Vision**

#### **Program Mission**

The program mission is to manage water resources to meet the current and future needs of the natural environment and Washington's citizens with principles affirming both people *and* fish by advancing the following two principles together, in increments, over time:

1. Meet the needs of a growing state population and to support a healthy economy statewide
2. Meet the needs of fish and healthy watersheds statewide

#### **Water Resources Vision**

The Water Resources Vision outlines a long-term preferred future for water resource management in Washington State. The critical importance of adjudications is affirmed in the Vision in that general adjudications of water rights are an essential part of water resource management in Washington State. Adjudications are currently the only definitive way to determine the extent and validity of existing water rights from a particular source or sources within a geographic area – information that is at the foundation of all water resource planning and management.

### **Section 3: Background**

A general adjudication of water rights under RCW 90.03.105 - .245 is a special form of quiet title action that determines all existing rights to the use of water from a specific body of water. A general adjudication may not be used to lessen, enlarge, or modify existing water rights. (Washington State Supreme Court *Acquavella III*)

*A general water rights adjudication* determines the validity and extent of existing water rights in a given area. Adjudication is a legal process, conducted through the superior court in the county in which the water is located. It involves surface and/or ground water. Adjudication does not create new rights, it only confirms existing rights.

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Under current law, Ecology may initiate a water right adjudication either in response to a petition filed by a citizen or planning unit, or, if after investigation, Ecology determines the interest of the public will be subserved by such an adjudication..

Adjudication benefits water users because it clarifies existing water rights. This provides greater certainty on the availability of water. Adjudication helps the Department of Ecology (Ecology) to better regulate during times of shortage and controversy. It also provides Ecology information to use when considering the impact of granting new rights and proposed changes to existing rights.

#### **Section 4: 2003 – 2005 and 2005 – 2007 Biennia (and Beyond): The Yakima Adjudication**

##### **Projected Adjudication Unit Workload and Staffing Requirements 2003 – 2005 Biennium**

<b>Workload &amp; Staffing Projections for 2003 – 2005 Biennium (FY 04 &amp; FY 05)</b>				
<b>Adjudication Unit Activity</b>	<b>Number of Actions</b>	<b>Staffing in FTEs</b>		
		<b>FY 04</b>	<b>FY 05</b>	<b>Total</b>
<b>Acquavella – Major Claimant Activities:</b> Conditional Final Orders (CFO's) Entered CFO's Mapped Draft Adjudication Certificates Prepared	15 0 31	0.79	1.32	2.11
<b>Acquavella – Subbasin Activities:</b> CFO's Entered CFO's Mapped Draft Adjudication Certificates Prepared (Subbasins)	6 0 21	3.02	2.34	5.36
<b>Acquavella – Closing Activities:</b> Appeals of Significant Legal Issues Order of Default Preparation Final Decree Preparation Supercede or Cancel Existing Water Right Documents Archiving Acquavella Records		0.22	0.12	0.34
<b>Adjudications – Other Activities:</b> AS/400 Database Maintenance Responding to Public & Internal Requests Court Documents Imaging Historic Adjudication Records Planning for Next Adjudication Management & Supervision		1.05	1.23	2.28

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<b>Workload &amp; Staffing Projections for 2003 – 2005 Biennium (FY 04 &amp; FY 05)</b>				
<b>Adjudication Unit Activity</b>	<b>Number of Actions</b>	<b>Staffing in FTEs</b>		
		<b>FY 04</b>	<b>FY 05</b>	<b>Total</b>
<b>Adjudication Unit – Non-Adjudication Activities:</b> Budget & Planning Contract Management GIS Activities Internal Policy Team Maintain RCW 90.14 Claim Records Metering Power License Fees Web Coordination (Back-up) Unscheduled or Unforeseen Activities	X	0.92	0.99	1.91
<b>Subtotal – Adjudication Activities</b>	X	<b>5.08</b>	<b>5.01</b>	<b>10.09</b>
<b>Subtotal – Non-Adjudication Activities</b>	X	<b>0.92</b>	<b>0.99</b>	<b>1.91</b>
<b>Total – Adjudication Unit Activities</b>	X	<b>6.00</b>	<b>6.00</b>	<b>12.00</b>

### Projected Adjudication Unit Workload and Staffing Requirements 2005 – 2007 Biennium

<b>Workload &amp; Staffing Projections for 2005 – 2007 Biennium (FY 06 &amp; FY 07)</b>				
<b>Adjudication Unit Activity</b>	<b>Number of Actions</b>	<b>Staffing in FTEs</b>		
		<b>FY 06</b>	<b>FY 07</b>	<b>Total</b>
<b>Acquavella – Major Claimant Activities:</b> Conditional Final Orders (CFO's) Entered CFO's Mapped Draft Adjudication Certificates Prepared	6 39 7	0.18	0.81	0.99
<b>Acquavella – Subbasin Activities:</b> CFO's Entered CFO's Mapped Draft Adjudication Certificates Prepared (Subbasins)	3 31 8	1.90	1.04	2.94
<b>Acquavella – Closing Activities:</b> Appeals of Significant Legal Issues Order of Default Preparation Final Decree Preparation Supercede or Cancel Existing Water Right Documents Archiving Acquavella Records	X	1.35	1.42	2.77

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Workload & Staffing Projections for 2005 – 2007 Biennium (FY 06 & FY 07)				
Adjudication Unit Activity	Number of Actions	Staffing in FTEs		
		FY 06	FY 07	Total
<b>Adjudications – Other Activities:</b> AS/400 Database Maintenance Responding to Public & Internal Requests Court Documents Imaging Historic Adjudication Records Planning for Next Adjudication Management & Supervision		1.71	2.14	3.85
<b>Adjudication Unit – Non-Adjudication Activities:</b> Budget & Planning Contract Management GIS Activities Internal Policy Team Maintain RCW 90.14 Claim Records Metering Power License Fees Web Coordination (Back-up) Unscheduled or Unforeseen Activities		1.08	1.13	2.21
<b>Subtotal – Adjudication Activities</b>		<b>5.14</b>	<b>5.41</b>	<b>10.55</b>
<b>Subtotal – Non-Adjudication Activities</b>		<b>1.08</b>	<b>1.13</b>	<b>2.21</b>
<b>Total – Adjudication Unit Activities</b>		<b>6.22</b>	<b>6.54</b>	<b>12.76</b>

The above tables summarize projected Adjudication Unit activities and staffing requirements including those dedicated to working towards closing out the Acquavella (Yakima) Adjudication. Those activities dedicated to closing out Acquavella are discussed in more detail as follows:

### Completing Yakima Adjudication Acquavella

On March 3, 1989, Judge Stauffacher signed Pre-trial Order Number 8, which established procedures for evaluation of Statements of Claim filed with the Court. The Court found the Acquavella Adjudication to involve an unusually large number of claims that are based upon either state or federal laws and which can be divided into discrete, manageable groups or pathways. The Court determined that dividing claims evaluation into Pathways would expedite claim evaluation and resolution. The following is a brief summary of the claim evaluation status by Pathway and estimated evaluation activities and staffing resources necessary during the next four (4) years (FY 2003 – FY 2007).

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### **Federal Reserved Rights for Indian Claims (Federal Reserved – Indian Pathway)**

This Pathway has reached Conditional Final Order (CFO) status. Adjudication Unit activities beyond CFO status are discussed in this document following the Pathway information.

The claims of the Yakama Nation were addressed in the Report of the Court (Volume 25) and in the Supplemental Report of the Court (Volume 25 A). The claims of the Yakima Reservation Irrigation District were addressed in the Report of the Court Volume 36.

### **Federal Reserved Rights for Non-Indian Claims (Federal Reserved – Non-Indian Pathway)**

This Pathway has reached Conditional Final Order (CFO) status. Adjudication Unit activities beyond CFO status are discussed in this document following the Pathway information.

The claims of the United States Forest Service and the United States Fish and Wildlife Service have been addressed in Report of the Court Volume 5, which has reached CFO status.

### **State Based Rights for Major Claimants (Major Claimant Pathway)**

There are 36 major claimants. CFO status has been reached for 19 of the major claimants. It is projected that CFO's will be entered for the remaining major claimants by the end of Fiscal Year 2006. The projected Fiscal Year for reaching Conditional Final Order for the remaining Major Claimants and the estimated Adjudication Unit staffing requirements are as follows:

Conditional Final Orders entered by the end of FY – 04:

- Ellensburg, City of
- Benton Irrigation District
- Grandview, City of
- Grandview Irrigation District
- Konewock Ditch Company
- Piety-Flat Ditch Company
- Prosser, City of
- Sunnyside, City of
- Sunnyside Valley Irrigation District

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Zillah, City of

Zillah, Irrigation District

Conditional Final Orders entered by the end of FY – 05:

Cascade Irrigation District

Cle Elum, City of

Columbia Irrigation District

West Side Irrigating Company

Conditional Final Orders entered by the end of FY – 06:

Ahtanum Irrigation District

John Cox Ditch Company

United States Bureau of Reclamation

Conditional Final Orders entered by the end of FY – 07:

United States Department of the Army for the Yakima Firing Center, etc.

### **State Based Rights for Other Claimants, by Subbasin (Subbasin Pathway)**

The Yakima River Basin was divided into thirty-one (31) subbasins. CFO status has been reached for 22 Subbasins. It is projected that CFO's will be entered for the remaining subbasins by the end of Fiscal Year 2007. The projected Fiscal Year for reaching Conditional Final Order for the remaining subbasin and the estimated Adjudication Unit staffing requirements are as follows:

Conditional Final Orders entered by the end of FY – 04:

Subbasin No. 8 (Thorp)

Subbasin No. 18 (Cowiche Creek)

Conditional Final Orders entered by the end of FY – 05:

Subbasin No. 9 (Wilson-Naneum)

Subbasin No. 10 (Kittitas)

Subbasin No. 27 (Satus Creek)

Subbasin No. 28 (Sunnyside)

Conditional Final Orders entered by the end of FY – 06:

Subbasin No. 23 (Ahtanum Creek)



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Subbasin No. 25 (Toppenish)

Subbasin No. 29 (Mabton-Prosser)

After Conditional Final Orders have been entered for all the Pathways work can commence on closing out the Acquavella adjudication. Closing activities include preparation of the Order of Default and the Court's Final Order (Decree); Geographic Information System (GIS) mapping of all confirmed rights; preparing and responding to any appeals; issuance of Certificates of Adjudicated Water Right; superseding of existing water right documents; archiving Acquavella records; and dealing with any unforeseen activities that may arise. These activities are briefly discussed below.

### **Conditional Final Order (CFO) Mapping**

Planning is underway for mapping the places of use and points of diversion of all confirmed water rights, by subbasin and major claimant, including Federal Reserved rights. These maps are being released in "Draft" format to the Ecology's Central Regional Office. They are in GIS format and when completed will indicate the Adjudicated Certificate number, place of use and point of diversion. Much work remains to rectify overlapping property descriptions and errors found in legal descriptions. Currently, Ecology attempts to rectify mapping errors when making exceptions to Reports of Referee and Reports of the Court. Work still remains in those subbasins that went to CFO prior to Ecology's implementation of this practice. A tracking sheet and files have been prepared that identify unresolved mapping errors for each subbasin. As the Central Regional Office authorizes changes to confirmed rights under Chapter 90.03.380 RCW and Pre-trial Order No. 12, those changes will be tracked to ensure they are incorporated in the final maps. Ecology, will need to work with the Acquavella Referee's Office, the Office of the Attorney General and the Court to create a Pre-trial Order authorizing a process to amend Conditional Final Orders prior to issuance of the Final Decree.

This Pre-trial Order should include all the anticipated solutions for issuance of the Final Decree, Adjudicated Certificates, partition of rights and could include the process for Order of Default.

Although mapping will not be completed until fiscal year 2007, considerable progress will occur in fiscal years 2004, 2005 and 2006. Currently, Adjudication Unit staff are mapping subbasin recommendation as Reports of Referee and Reports of the Court are issued by the Acquavella Court. Mapping is subsequently updated based upon modified and new recommendations contained Supplemental Reports and Conditional Final Orders. Mapping is not completed until discrepancies and Chapter 90.03.380 RCW authorized changes to confirmed rights are incorporated, which won't happen until the Acquavella Final Order is ready for entry by the Court.

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### **Order of Default Link to Court Rule CR – 55 (Default and Judgment)**

Order of Default requirements for Acquavella have changed since the case was filed in 1977. The Order of Default process requires notification of all parties that were named defendants and were served summons but did not appear either by filing a Notice of Appearance or Statement of Claim with the Court. When this process is started a meeting with an Assistant Attorney General is necessary to determine to what extent service of the Order of Default must be made upon the defaulting parties.

Ecology has an old archived list of original defendants and their last known address (contact Kevin Barbee for the DIS Archival location) this list is on an old system that may not be retrievable. The requirement of Service could open a whole new process in this case. When this process begins original service documents may need to be produced. Ecology has a couple of copies of the old system (hard copy printouts), which show how original service was ascertained. All of the Affidavits and documentation have been filed with the Clerk. Ecology still has, in its records each water right document, with an attached sheet of who was named as defendant for that document.

Completing preparation of the Order of Default could also result in a significant workload. We will need to identify all defaulting parties, which will be relatively simple. The difficult part will be locating the defaulting parties and serving them with the Order of Default.

### **Final Order (Decree)**

The Final Order is an integration of all Acquavella Court confirmed rights by their priority dates. The final decree in this case will be produced by the AS400 report writing system. The system is prepared to produce this document but testing has not been done to insure it will pull the right fields for production of this report. Lacking in the AS400 system, are the schedule of rights for Major Claimants, and any changes made to rights through the administrative procedures of chapter 90.03.380 RCW. As "Draft Certificates" are produced most of the errors in the system will be rectified. This document will have to be mailed to all parties in this case with a substantial printing and mailing cost. Considerable work will be required to insure all confirmed rights have been entered into the AS400.

### **Appeals (Significant Legal Issues)**

Appeals of significant legal issues have been filed through out this case, producing case law that will be used in water management statewide. There are many issues left that could be taken to the Court of Appeals, Supreme Court or even Federal District Court or beyond. By negotiation, Ecology has resolved many of the Major issues in Acquavella. Major legal issues that are still unresolved include the Warren Act Order, where the Court ruled a state water right document was not necessary to preserve the

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rights of parties who have a valid Warren Act Contract with the United States. As a consequence of the case law of Acquavella III, the Acquavella Court may need to revisit its Warren Act Contract Order. If Ecology determines the Warren Act Contract issue is still viable it may need to appeal. The return flow issue is still pending for the Cascade Irrigation District and numerous Subbasin 28 claimants. Issues dealing with integration of confirmed rights into the Decree for reservation lands and those areas bordering the reservation could end up in Court of Appeals. When issues are taken to appeal it can result in a significant workload increase for the Attorney General's Office as well as technical staff who must provide support. For each level of appeal, the process can take up to two-plus years and extend the case until issues are resolved.

### **Superseding of Existing Water Right Documents**

In each Report of Referee and Report of the Court there is a list of existing Certificates which will require production of a Superseding Document. Such superseded Certificates will have to be filed in the County Auditors office, entered in our WRTS tracking system, and filed with Ecology's water right documents. Production of these superseding documents will have to adhere to the requirements of the County and filing fees will have to be paid by Ecology. No notification back to the original owner will be necessary, as the Court has already given notice.

Ecology will also need to make the proper notation to all RCW 90.14 claim documents entered as exhibits in the case. The court did not list these document numbers therefore all of the exhibits entered by Ecology will have to be researched to insure all RCW 90.14 claim numbers are properly noted. The notification on RCW 90.14 claims is simply that this case has been completed and those RCW 90.14 claims have been either superseded by confirmed rights or cancelled by the final Decree. There will be no way to associate Adjudicated Certificates and RCW 90.14 Claims in this case. For future adjudications tracking these associations upfront, including notation in the record of the proper replacement document (if one should exist).

### **Issuance of Certificates (Title Research)**

As previously mentioned "draft" certificates are being prepared. Some time ago it was decided rather than continuously going back to the County to research title records, for those parties we have lost contact with, we would do necessary title research just prior to issuance of Certificates of Adjudicated Water Rights. At that time the current property owner will be notified that their Certificate of Adjudicated Water Right can be issued upon their payment of the Certificate filing fees. The process of splitting confirmed water rights resulting from changing property ownerships should be discussed with an Assistant Attorney General. Forms similar to Ecology's assignment form may have to be developed by Ecology and signed and notarized by appropriate claimants. In this case claimants are responsible for keeping the Court informed of property sales or division transactions, see Pre-trial Order No. 3. Ecology may want to rely on Pre-trial Order

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No. 3 and not research title records. It is highly recommended Ecology potential procedures with an Assistant Attorney General.

#### **Archiving Acquavella Records:**

Most official Acquavella adjudication records are located in the Yakima County Superior Court Clerk's office. Many of these records are exhibits and are referenced in decisions made by the Court, some have even been incorporated by reference into specific confirmed water rights. Because many courts dispose of exhibits once a case is completed, it is imperative that these important Acquavella documents be retained, therefore preserving the integrity of the adjudication. A plan will be developed in the near future to address archiving (imaging) pertinent records from the Acquavella Referee's office, the Adjudication Unit, the Attorney General's Office, and Yakima County Superior Court. The proposed plan will be sent to the legislature along with a proposal for funding to begin this process.

#### **Additional Provisions to Consider (Staffing Changes, Budget, Appeals, Etc.):**

Ecology should consider asking the United States and the Yakama Nation to jointly file a Motion prior to issuance of the final decree regarding additional provisions which should be added to each Adjudicated Certificate. Provisions to consider would be fish screening criteria; metering and reporting criteria, if they weren't already covered by previous orders; and any other criteria which may be passed by legislation prior to issuance of Certificates. Other matters to consider may be a time limit on payment of Certificate fees. As noted above Ecology could choose to rely on the Pretrial Order No. 3 and issue Certificates to the last known party, then ask the Court to put a time limit for payment of fees and automatically default those parties who don't pay fees after a year. If that happens Ecology should consider regulation on those rights in a timely manner as well as those Acquavella claimants whose claimed rights were denied by the Court.

#### **Closing Note:**

Put Ecology's funding where the law is and enforce all prior adjudicated areas before initiating a new adjudication. If enforcement funding is not available existing Acquavella FTE's and funding could be used to enforce the 83 adjudications as Acquavella winds down.

### **Section 5: 2003 - 2005 Biennium: Looking Forward**

Significant Yakima Adjudication (Acquavella) workload will likely continue through the 2005 – 2007 biennium. It is difficult to predict precisely when Acquavella will be completed, however, it is anticipated that Acquavella workload will reduce significantly towards the end of the 2005 – 2007 biennium.

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The focus for the Adjudications Unit during the 2003 – 2005 biennium will be to participate in completing most of this adjudication at the pace set by the Court. In conjunction with this Acquavella work, the Adjudications Unit and the Water Resources Program should plan for initiation of a new adjudication(s) towards the end of the 2005 - 2007 biennium. The following is a discussion of preliminary considerations for that planning effort.

#### **Work that should be accomplished prior to commencing the next adjudication:**

Ecology should conduct most of the research early in the adjudication process. This positions Ecology to be able to provide comprehensive background information prior to the commencement of evidentiary hearings, which can occur a significant period of time after filing for an adjudication case. Ecology could share this information with claimants early in the adjudication. Based on this information and documentation, the agency could complete an initial evaluation and share it with interested parties. Although, there would be a greater cost in the initial preparation, there should be a savings in time to the state, the court, and the claimants later in the adjudication process. In addition, local, state, or federal agencies would be less impacted if the number of inquiries (often duplicative requests for public records) were reduced.

Public outreach will be very important prior to initiation of a new adjudication. Ecology should prepare a public notification strategy prior to initiation of a new adjudication. Focus sheet, news releases, letter and possible public meetings should be used to inform water right holders, legislators, and local elected officials and law enforcement agencies prior to filing an adjudication.

Prior to the filing adjudication Ecology is required to prepare a statement of facts, together with a plan or map of the locality under investigation. The boundaries and characteristics of geographic area to be adjudicated must be defined, including ground water aquifers boundaries, if ground water is included (which is highly recommended), and the surface water drainage basin. It is recommended that other maps and aerial photographs be prepared and compiled prior to filing the adjudication. Ecology should prepare maps depicting the states water right certificate and RCW 90.14 claim records. Ecology should also compile USGS Quadrangle maps, county assessor parcel maps, and historic aerial photographs. Historic aerial photographs should include the earliest coverage available, 1933 coverage, and most current coverage. It would also be extremely useful if the aerial photography coverage could be integrated as Geographic Information System (GIS) layers. These maps and aerial photography would be entered as formal exhibit later in the process and would be used through out the adjudication as analytical and research tools.

Flow data information is useful in determining water duties, conveyance losses in diversion ditches, and seasonal fluctuations in stream flows. With considerations regarding access to private property it may not be possible to conduct this activity prior to filing an adjudication. A claimant diversion measurement effort should be initiated, but will not be successful without claimant cooperation.

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Digitally link mapped water rights to county tax parcel and ownership information. For most counties, this will provide better access to property ownership information and depict the relationship of property to the place of water use and other relevant information. By using tax parcel information to identify land ownership, certified notices may be mailed once an adjudication is initiated, possibly reducing the need and cost for personal notification (service of summons). This takes either statutory change or special authorization from the Court. This calls for serving the property owner, taxpayer, and in some cases, the financial institution.

Obtain and use digital aerial photography and satellite imagery. These images are useful in analyzing the extent of past and current water use and in estimating the age of existing development.

To the extent authority exists to do so, require that existing water withdrawals and diversions be measured. Expand the metering requirements to all water users in the basins so data can be used in future adjudications. If the authority does not exist, petition the court to require this. Because most areas which would be considered for adjudications are most likely on the critical basin lists, expand the metering requirements to all water users in these basins so data can be used in future adjudications.

Coordinate scoping of the area with any existing watershed planning group through the watershed planning lead or with other interested parties.

Plan an appropriate information technology system for case management as the adjudication progresses. Timing is critical to insure that this system is in place before the adjudication begins so that it can support the adjudication process.

#### **Things to do during the next adjudication**

When it is determined that an adjudication should be initiated, a Statement of Facts and petition is filed by Ecology (the Plaintiff) with the appropriate Superior Court to initiate the case. The Statement of Facts must contain the names of all known persons claiming water rights from the water source(s) to be adjudicated, and a brief statement of the facts and maps regarding the water source and the necessity for a determination of the relative rights associated with the water source.

Based upon experience gained through previous adjudications, there will be less confusion regarding the scope of a case and it will assist the court and potential participants if the Statement of Facts provides more information than the minimum required by statute. Therefore, the Statement of Facts should contain at least the following additional information as is appropriate for the area being adjudicated:

1. Maps and accompanying data that depicts present ownership of property, the places of use of existing water right claims and certificates, known water sources and the boundaries of the area to be adjudicated, and established streamflow measuring points,

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and other information that may be relevant in determining and resolving the issues related to the adjudication.

2. Copies of all RCW 90.03 water right certificates, RCW 90.14 registered water right claim, and well logs (if ground water is included) for the area to be adjudicated.
3. Information that may be useful to potential participants regarding the purpose and benefits of conducting the adjudication as well as Ecology contact that could assist claimants regarding research of existing water right records that haven't already been provided by Ecology.
4. A proposed plan for the conducting of the adjudication, including, case management, and proposed stipulations or Pre-Trial Orders that Ecology asks be considered by the court in initial proceedings.
5. A proposed Statement of Claim form to be completed by claimants asserting water rights in the adjudication.
6. A recommendation for a Referee to be appointed upon remand of the case to Ecology.

Upon initiation of the case and resolution of preliminary matters, Service of Summons, the acceptance of Statements of Claim, and other procedures are conducted in accordance with the rules adopted by the court. Statements of Claim should be filed at the early stages of the adjudication to identify participants and provide a preliminary assessment of the water rights to be resolved and the issues to be heard by the court. Based upon Ecology's Acquavella experiences, claimants should be required to update/revise their Statements of Claim prior to the time of their scheduled evidentiary hearing when the adjudication will take more than a few years to complete. The updated/revise Statement of Claim will be the final identification of parties and their claimed water rights. Claimants should also explain variances between the initial and updated/revise Statements of Claim. This should occur immediately prior to the evidentiary hearings.

If a Referee is appointed, that person should have good organizational skills and have expertise in court procedures, water law, and water use as it relates to water rights. The Referee is a fact finder, and writes a report to the court that includes findings and recommendations for the confirmation of water rights. It is not necessary for the Referee be a legal expert. The objective of retaining a Referee is to supplement the skills and knowledge of the court. The Referee should be given a broad authority by the court to find facts. The adjudication plan proposed to the court should propose that the Referee not be bound by strict court rules during evidentiary hearings, but should be allowed greater ability to ask probing and leading questions. The Referee should also be allowed become familiar with the area being adjudicated. Liberal rules for Referee evidentiary hearings will result in a more complete set of facts, will assist claimants appearing without legal council, and will assist claimant attorneys if important factual points would otherwise be missed. The Referee's Office should be considered a neutral

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participant in the adjudication and should include the function of assisting claimants in understanding adjudication procedures and the role of the Referee. Authority to mediate significant factual issues might also be delegated to the Referee.

Ecology as plaintiff has a multipurpose function during an adjudication. Ecology provides public assistance to interest parties, assists the court in matters of case management, participates in hearings before the court and the Referee, investigates Statements of Claim, and presents testimony, factual information, and exhibits to the Referee and the court. Ecology's focus is on development of factual records upon which the Referee can base confirmation recommendations and may take positions on issues of compelling public interest. Ecology should participate with other parties to ensure that state water law is accurately and consistently interpreted by the court. Ecology remains neutral on the confirmation of specific water rights if they are supported by the evidence and are consistent with water law.

#### **Staffing and Resource Needs for a Future Adjudication:**

An adjudication unit within Ecology consisting of staff to conduct research and investigations including hydrology, manage the case, maintain information technology system(s) (databases, GIS mapping, etc.), and provide technical expertise on specific issues unique to the adjudication including interpretation of water law. Supervisory and management staff would also be required. There would also be an impact on Ecology Executive Management, if the next adjudication involved a significant mediation effort of when formulating policy positions dealing with significant legal or factual issue. Staff with appropriate expertise may testify or otherwise provide information regarding hydraulics, farming practices, crop water requirements, and other issues of general public interest or concern. Expertise required will vary depending upon the issues that arise within a specific adjudication.

A Referee that serves as the water right and water use expert for the court of jurisdiction.

Staff of the Office of the Attorney General that serve as the lawyers on behalf of each interested state agencies and most significantly for Ecology as plaintiff.

Regional office field staff, either under the supervision of the adjudications staff or the regional office. Regional staff must be able to work face-to face with claimants, their attorneys, the court, and others on an as needed basis. Use of regional office staff enhances the adjudication process and they have already become familiar with the area being adjudicated.

#### **Maximizing the Benefits of the Adjudication.**

Entry of the Decree by the Adjudication Court does not complete the adjudication process. The Decree (Final Order) establishes a schedule of rights specifying the extent and relative priority of all confirmed water rights. The certainty provided by an adjudication is useful in watershed and resource planning, water marketing, and for evaluation of applications for change and transfer of existing water rights. The results of an adjudication provide necessary



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information to regulate water uses to ensure that senior water rights are satisfied according to their priority to the extent water is available. The determinations of the court are maintained and may be updated through relinquishment activity.

Post adjudication activities include:

1. Regulation of existing water rights, including compliance and enforcement activities. This may include the establishment of Stream Patrolmen and/or Water Masters. A commitment to regulate adjudicated water right is essential to maintaining the property interests of water right holders. Stream patrolman are located in the adjudicated area and are delegated authority to regulate the adjudicated water rights. Regulated water right holders pay for the services of a stream Patrolman through county assessments. Water Masters are Ecology employees with general authority to implement the state's water laws and to regulate water rights.
2. Over time property ownerships change and confirmed water rights can be changed or transferred. To track such changes and to assist compliance activities, Ecology must maintain GIS maps of confirmed water rights, property ownership, stream gages, and other information within the adjudicated area. This information is very useful for watershed management and water right regulation and permitting. The general public will also find this information useful for property ownership transactions and real estate development. The established historical record will allow water right holders and other interested parties to know with relative certainty the water supply associated with the adjudicated water rights.
3. Stream gages. Stream flow gages are important for identifying critical times to regulate. An adjudication court will not generally dictate the location of gages. An extensive knowledge of the water source may be required prior to establishing gages for regulatory purposes. Additionally, gages will provide an indication of the extent to which water is available for the satisfaction of junior rights as the flow record is established. Stream flow information is essential to support water markets and water right change and transfer decisions.

### **The Next Adjudication?**

During the 2003 – 2005 biennium Ecology should plan for initiating the next adjudication as Acquavella activities wind down during the 2005 – 2007 biennium. Over the years Ecology or its predecessor agencies have received numerous petitions to initiate adjudications. There may also be requests or adjudication petitions that result from current watershed planning initiatives. In it's planning efforts Ecology should consider the following before selecting the geographic area to adjudicate next.

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### **Selection Considerations:**

Ecology should consider historic and future petitions filed by private parties. Ecology should also give consideration to petitions that may be filed by watershed planning units in the future.

Consideration will also need to be given to Water Resources Program workload and staffing needs, the history of water right regulation and enforcement activities and needs, water availability, water right permitting, water marketing (water right changes and transfers), and other water resource initiatives that further Ecology's vision and the Governor's water strategy.

Other consideration should include Endangered Species Act listings, instream flows and lake levels, and fish critical issues; Tribal and federal reserved water right issues and conflicts with state based water rights, local and legislative support; the ability of the local economy to be maintained during the uncertainty associated with an ongoing adjudication; the impact of a new significant adjudication on the courts; and growth management and the growing communities.

The next adjudication should include all claims to historic existing surface and ground water rights, including exempt ground water withdrawals.